IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.177 OF 2006

IN

SPECIAL CIVIL SUIT NO.124 OF 2004

WITH

CIVIL APPLICATION NO.245 OF 2006

M/s.Vishrut Infortech Pvt.Ltd. & Ors...Appellants

Versus

Shri.Mushtak Ahmed Mohammed Ibrahim

Patel & Ors. ...Respondents

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Mr.A.K.Abhyankar with Mr.J.B.Lentin & Mr.Devendra Singh i/b Mr.Akhilesh S.Dubey for Appellants.

Mr.Rajiv Patil with Mr.S.S.Pande for Respondents 2 & 3.

Mr.Y.S.Jahagirdar, Sr.Counsel with Mr.Pramod Patil for Respondents 10 and 12.

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CORAM: A.M.KHANWILKAR, J.

MARCH 21, 2006.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mr.Pande waives notice for Respondents 2 and 3. Mr.Patil waives notice for Respondents 10 and 12.

3. As all the contesting Respondents are represented by the Advocates, by consent, notice to other Respondents is dispensed with.

4. This Appeal from Order takes exception to the Judgment and Order passed by the Civil Judge, Senior Division, Panvel dated February 28, 2006 below Exhibit 5 being Special Civil Suit No.24 of 2005. Counsel for the parties have requested this Court not to record any reasons as that may influence the decision of the Trial Court, as the matter is likely to be remanded in terms of this order. It is for this reason, I am not adverting to all the facts in extenso.

5. Suffice it to observe that the grievance of the Appellants before this Court is that the Trial Court has completely glossed over the crucial

aspects of the matter and proceeded to decide Exhibit 5 on certain assumptions and on irrelevant and non-germane basis, which cannot be sustained either on facts or in law. That submission canvassed by the Counsel for the Appellants will have to be straight way accepted. For, prima facie, there is substance in the grievance of the Appellants that insofar as Defendant No.3 is concerned, he had no causal connection with the suit plot Nos.16, 17 and 19, has not been kept in mind by the Trial Court; whereas, the entire Judgment proceeds to place emphasis on the right of Defendant No.3 with regard to the said plots. It is also argued on behalf of the Appellants that the Defendant No.12 is in possession of only portion of Plot Nos.16, 17 and 19 to the extent of around 612 square meters area and not the remaining portion of the plot which is totally admeasuring 4900 square meters. Even this crucial aspect has been glossed over by the Trial Court.

6. The argument canvassed on behalf of the Appellants is sought to be substantiated from the several documents executed between the parties from

time to time and lastly, the final assignment deed executed between Defendant Nos.1, 2, 4 to 9 on the one hand and Defendant No.10 and Plaintiff No.2 as confirming parties in favour of Plaintiff No.1. This document clearly records that possession of Plot Nos.16, 17 and 19 has been made over to the Plaintiff No.1. All these aspects have not been adverted to in the entire Judgment which is impugned before this Court. Even so, the Trial Court has recorded its opinion that prima facie case has not been made out by the Plaintiff.

7. As mentioned at the outset that the Counsel appearing for the parties requested the Court not to record detailed reasons pointing out the infirmities in the impugned Judgment, lest that would affect the outcome of the matter before the Trial Court to be considered in terms of remand order to be passed by this Court. I have accepted that request. It is made clear that the Trial Court shall examine the matter afresh on its own merits.

8. It is also brought to my notice that

subsequently, the Appellants had filed Application Exhibit 81 praying for injunction against Defendant Nos.10 and 12 from interfering with the peaceful possession of the Plaintiff in respect of the suit plots and further injunction to refrain from carrying out construction activity on the suit plot as also direction to take appropriate legal action for maintaining peace in and around the suit plots. That application has been rejected by the order dated 28th February 2006. The sole reason recorded in the order is that on the earlier occasion the Trial Court had negatived the stand of the Plaintiffs regarding prima facie case and balance of convenience and for the same reason, the said application was rejected.

9. Indeed, the said order has not been formally challenged before this Court but the same is dependent on the order which is subject matter of challenge in this Appeal. As the impugned order is being set aside, the parties are relegated before the Trial Court for reconsideration of the entire matter afresh. Accordingly, even this order on Exhibit 81 will have to be set aside as a

consequence of this order, so that, both Exhibits 5 and 81 can be heard and decided by the Trial Court on its own merits in accordance with law, uninfluenced by ay observations made in the impugned order or for that matter, the present order.

10. It is once again made clear that all questions raised on behalf of the respective parties are left open including the stand of the Defendants 2 and 3 as was canvassed before this Court.

11. This Appeal as well as Civil Application is disposed of with direction to the Trial Court to finally dispose of the restored Exhibit 5 and Exhibit 81 as expeditiously as possible, preferably by end of April 2006.

12. Parties may appear before the Trial Court on 29th March 2006, when the Trial Court will assign appropriate date for hearing of both the Applications Exhibit 5 ad Exhibit 81 respectively, to be heard together on suitable date, keeping in

mind that the same will have to be finally disposed of by end of April 2006.

13. Till the disposal of the said Applications, interim arrangement ordered by this Court as noted in order dated March 16, 2006 shall be continued. Besides, it is made clear that any activity undertaken by the Defendant No.10 on the suit plot will be subject to the outcome of the remanded proceedings and he will abide by the orders to be passed by the Trial Court in remanded proceedings. In other words, the said Defendant will carry on further activity on the suit plot entirely at his risk, cost and consequence thereof and shall not claim equity later on.

14. It is, however, placed on record that the Appellants before this Court are seriously disputing the factum of possession of the portion of the suit plot. According to them, the Appellants are in possession of the suit plots and Defendant No.10 will have no right whatsoever to carry on any activity on the suit plot. All these aspects will be considered by the Trial Court and

appropriate orders passed in the remanded proceedings.

A.M.KHANWILKAR, J.